

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: FRANCIS CARROLL, Complainant, vs. MATRIX TELECOM, Respondent.	DOCKET NO. C-04-86
---------------------------------------------------------------------------------------------------------	--------------------

**ORDER DENYING REQUEST FOR FURTHER INFORMAL CONSIDERATION
AND ALTERNATIVE REQUEST FOR FORMAL PROCEEDING**

(Issued June 18, 2004)

On May 28, 2004, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed with the Utilities Board (Board) a request for further informal consideration in this docket or, alternatively, a request for formal proceedings. Based upon the record assembled in the informal complaint proceedings, it appears the events to date can be summarized as follows:

On March 30, 2004, Mary A. Hajeh submitted a letter of complaint against Matrix Telecom (Matrix) on behalf of her parents, Mr. and Mrs. Carroll, alleging that Matrix switched the Carrolls' long distance service from Iowa Telecommunications Services, Inc., d/b/a Iowa Telecom (Iowa Telecom), to Matrix without the Carroll's

authorization. Board staff identified the matter as C-04-86 and, pursuant to Board rules, on April 5, 2004, forwarded the complaint to Matrix for response.

Matrix responded to the complaint on April 8, 2004, stating its records show that the Carroll's account was opened in June 2000 and had been set up so that an underlying carrier, Global Crossing, passed long distance call traffic to another company, IECOM, who in turn was to bill the Carrolls through USBI Billing Company. Matrix stated that the Carrolls' account was transferred to Matrix for service starting January 5, 2001, through the IECOM bankruptcy proceedings. Matrix also stated that it is a switchless reseller as a long distance provider and only bills for traffic sent to Matrix for billing.

Board staff sought clarification of the Matrix response from Iowa Telecom. Iowa Telecom stated that according to its records, the Carrolls' interLATA long distance service was assigned to inconclusive Preferred Interexchange Carrier (PIC) numbers from at least January 2000, until February 19, 2004, when the Carrolls' changed their long distance service to Iowa Telecom. By "inconclusive PIC numbers," the Board understands Iowa Telecom to mean that the account was assigned to an interexchange carrier other than Iowa Telecom, but the company is unable to identify the carrier with certainty.

The record also shows that the Carrolls began receiving bills from Matrix in September 2003. Matrix offers no explanation as to why the Carrolls did not receive a bill from Matrix between January 2001 and September 2003.

On May 14, 2004, Board staff issued a proposed resolution describing these events and finding that no slam had occurred because the change in long distance service occurred more than two years ago. Board staff indicated that Matrix is not obligated to provide proof of authorization for a change in the Carrolls' long distance service that occurred more than two years prior. Board staff also provided a toll-free number for the Carrolls to contact to establish payment arrangements for the outstanding bill.

In its May 28, 2004, petition, Consumer Advocate requests that the informal proceedings be reopened to determine whether Matrix is entitled to collect this bill from the Carrolls. In the alternative, Consumer Advocate requests initiation of formal complaint proceedings pursuant to Iowa Code § 476.3.

On June 4, 2004, Matrix submitted a response to the petition wherein Matrix reiterated its position and categorically denied any wrongdoing. Matrix also stated that as a courtesy, full credit was issued to the Carrolls' account and the account was closed.

The Board has reviewed the record and Consumer Advocate's petition and finds that there are no reasonable grounds for further investigation of this matter, either informally or formally. The Carrolls have received a full credit and their account with Matrix has been closed. In other cases involving alleged slams and customer credits, the Board has found reasonable grounds for formal investigation to determine whether a carrier has engaged in slamming activity (for purposes of

assessing civil penalties), but in this case no purpose would be served by further investigation. The Carrolls' service was apparently changed in January or June of 2000. Pursuant to 199 IAC § 22.23(2)"a," any third-party or other verification regarding that change was only required to be maintained for two years, so the failure of Matrix to produce a verification is not legally significant and the slamming question cannot be resolved.

However, the Board notes that this situation does not mean that Matrix would have been entitled to collect the alleged amount due from the Carrolls (if no credit had been issued). The two-year record maintenance requirement is predicated on the assumption that the carrier has been billing the customer during that two-year period and the customer has been paying the bills. Under those circumstances, it may be reasonable to conclude that the customer knew or should have known about the change in service and, by paying the bills, has accepted the change.

In cases like this one, however, where the carrier fails to bill the customer during that two-year period, the customer may not have had adequate notice of the change in service. Accordingly, in these and similar cases the burden should remain on the carrier to prove at a minimum that service was provided, that a reasonable effort was made to bill the customer in a timely manner, to provide a reasonable level of bill detail, and generally to prove that the carrier's rates are reasonable and the carrier is entitled to payment. Otherwise, the hypothetical possibility exists that an unscrupulous carrier might slam a customer's account but delay billing for two years,

after which the carrier would claim service was provided at exorbitant rates and no verification is required. The Board is not, by this statement, attributing any such behavior to Matrix; the Board is only explaining its understanding of how paragraph 22.23(2)"a" applies in cases like this.

IT IS THEREFORE ORDERED:

The "Request for Further Informal Consideration and Alternative Request for Formal Proceeding," filed by the Consumer Advocate Division of the Department of Justice on May 28, 2004, is denied.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 18th day of June, 2004.